



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/502,240	07/21/2004	Sadao Omata	IS14-002	3991

7590

01/06/2006

D Brent Kenady
Wells St John
Suite 1300
601 West First Avenue
Spokane, WA 99201-3828

EXAMINER

ROGERS, KRISTIN D

ART UNIT	PAPER NUMBER
----------	--------------

3736

DATE MAILED: 01/06/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

e

Office Action Summary	Application No. 10/502,240	Applicant(s) OMATA, SADA0	
	Examiner Kristin D. Rogers	Art Unit 3736	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 November 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-7 is/are pending in the application.
- 4a) Of the above claim(s) 5-7 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-4 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☒ Claim(s) 1-7 are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on 21 July 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>November 2, 2005</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

This action is in response to applicant's amendment received on November 2, 2005.

1. Claims 5 through 7 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on November 2, 2005.
2. Applicant's election without traverse of Species I, claims 1 through 4 in the reply filed on November 2, 2005 is acknowledged.

Information Disclosure Statement

3. The information disclosure statement filed July 21, 2004 fails to comply with 37 CFR 1.98(a)(2), which requires a legible copy of each cited foreign patent document; each non-patent literature publication or that portion which caused it to be listed; and all other information or that portion which caused it to be listed. It has been placed in the application file, but the information referred to therein has not been considered. Applicant has not included an English translation for the foreign patent documents cited on the information disclosure statement.

Specification

4. The disclosure is objected to because of the following informalities: Applicant should omit "the" before "aging" (page 1, line 9) and should include "the" before pelvis (page 1, line 15). Correction is required. See MPEP § 608.01(b).

5. The lengthy specification has not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the specification.

6. The incorporation of essential material in the specification by reference to an unpublished U.S. application, foreign application or patent, or to a publication is improper. Applicant is required to amend the disclosure to include the material incorporated by reference, if the material is relied upon to overcome any objection, rejection, or other requirement imposed by the Office. The amendment must be accompanied by a statement executed by the applicant, or a practitioner representing the applicant, stating that the material being inserted is the material previously incorporated by reference and that the amendment contains no new matter. 37 CFR 1.57(f).

7. The attempt to incorporate subject matter into this application by reference to Japanese Patent Application Kokai-Publication No. Hei 9-145691 is ineffective because the detail of the phase shift circuit is essential to the examination of matter claimed in the present application (claim 6).

Claim Objections

8. Claim 4 is objected to because of the following informalities: Applicant should change "guage" to read, "gauge". Appropriate correction is required.

Claim Rejections - 35 USC § 102

9. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

10. Claims 1 and 4 are rejected under 35 U.S.C. 102(b) as being anticipated by Leonard et al. (6063044). In regard to claim 1, Leonard et al. shows an elasticity measuring device **20**, a probe base **60**, at least one probe **29** arranged around the probe base, a resilient arm member **68**, a stress detection sensor **58**, and a deviation detection sensor **55,56**. In regard to claim 4, Leonard et al. shows a stress detection sensor **58** comprising of a distortion gauge.

11. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

Claim Rejections - 35 USC § 103

12. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

13. Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Leonard et al. as applied to claim 1 above and in view of Arhan et al. (4566465). Leonard et al.

Art Unit: 3736

shows an elasticity measuring device **20**, a probe base **60**, at least one probe **29** arranged around the probe base, a resilient arm member **68**, a stress detection sensor **58**, and a deviation detection sensor **55,56**. Leonard et al. lacks a resilient arm member comprising a plurality of spring members and a plurality of probes. Arhan et al. teaches a probe for measuring visco-elastic behavior of sphincters that comprises of a probe **Figure 1**, a probe base **18**, resilient arm member **7**, a plurality of spring members **5,6**, and a plurality of probes **1,2,3**, for the purpose of arranging the probes symmetrically around the probe base. Therefore, it would have been obvious to one having ordinary skill in the art at the time of the invention to have modified the device of Leonard et al. with a resilient arm member comprising a plurality of springs and a plurality of probes as taught by Arhan et al. for the purpose of providing a symmetrical arrangement of probes around the probe base through corresponding spring members.

14. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Leonard et al. and Arhan et al. as applied to claims 1 and 2 above and further in view of Frei et al. (4250894). Leonard et al. shows an elasticity measuring device **20**, a probe base **60**, at least one probe **29** arranged around the probe base, a resilient arm member **68**, a stress detection sensor **58**, and a deviation detection sensor **55,56**. Leonard et al. lacks a deviation detection sensor comprising light emitting and light receiving elements. Frei et al. teaches an instrument for visco-elastic measurement that includes a deviation detection sensor **120** and coupled light source **125** comprising a photodiode and a photocell (light emitting and light receiving elements) **Figure 12** for measuring the deviation of the stress detection sensor **121**. It would have been obvious to one having

Art Unit: 3736


ordinary skill in the art at the time the invention was made to modify the device of Leonard et al. with a deviation detection sensor comprising light emitting and light receiving elements as taught by Frei et al. since such modification would provide the device with a deviation detection sensor with light emitting and light receiving elements for providing measurement of the changes in distance of the stress detection sensor.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kristin D. Rogers whose telephone number is 571.272.7293. The examiner can normally be reached on Monday through Friday 8:00am - 4:30pm EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Max Hindenburg can be reached on 571.272.4726. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

KDR


MAX HINDENBURG
SUPERVISOR PATENT EXAMINER
ART UNIT 3736